

From the Town of Sutton's Zoning Bylaw:

K. Open Space Residential Development

1. Purpose and Intent

Open Space Residential Development is the preferred form of residential development in the Town of Sutton for residential developments in the R-1 Residential-Rural district and R-2 Residential-Suburban district. Use of this Open Space Residential Development bylaw will:

- a. Allow for greater flexibility and creativity in the design of residential developments.
- b. Encourage the permanent preservation of open space, agricultural and forestry land, other natural resources including water bodies and wetlands, and historical and archeological resources.
- c. Maintain the town's traditional character and land use pattern in which small villages contrast with open land.
- d. Protect scenic vistas from the town's roadways and other places.
- e. Facilitate the construction and maintenance of streets, utilities and public services in a more economical and efficient manner.
- f. Protect existing and potential municipal water supplies.
- g. Encourage a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional or grid subdivision.
- h. Minimize the total amount of disturbance on the site.
- i. Preserve open space areas for active and passive recreational use, including the provision of neighborhood parks and trails.
- j. Encourage the provision of diverse housing opportunities and the integration of a variety of housing types.

2. Applicability

The Planning Board may grant a special permit for an Open Space Residential Development for any parcel or contiguous parcels totaling at least five (5) acres.

3. Procedural Requirements

a. Rules and Regulations

The Planning Board shall adopt Rules and Regulations consistent with the provisions of this Bylaw and shall file a copy of said Rules and Regulations with the Town Clerk. Such rules shall address the size, form, contents, and number of copies of plans and other submittals and the procedure for the review of special permits. The Planning Board shall establish fees for the submission, processing, and administration of the application and shall assess review fees for the engineering and technical review of any proposal.

b. Pre-Application Meeting

A pre-application meeting between the Planning staff and the applicant is strongly encouraged.

c. Preliminary Plan/Open Space Concept Plan

1. Applicants considering Open Space Residential Development are strongly encouraged to submit an Open Space Concept Plan along with a Preliminary Subdivision Plan for review by the Planning Board. An Open Space Concept Plan consists of the existing conditions plan required in Section IV.K.3.e below, clearly indicating areas suitable for preservation or conservation as described in Section IV.K.5 and 6 of this Bylaw and a sketch plan of the overall development concept.
2. In addition to identifying appropriate areas for open space preservation, one of the purposes of this review is to determine the maximum number of lots which may be created in the Open Space Residential Development. Approval of a preliminary plan pursuant to M.G.L. Chapter 41, §81-S will also shorten the period of review for the Definitive Subdivision and Open Space Residential Development Plan.

d. Definitive Subdivision and Open Space Residential Development Plan

The Definitive Open Space Residential Development Subdivision Plan shall be prepared by a team including a Registered Civil Engineer, Registered Land Surveyor, and a Registered Landscape Architect. The plan shall show:

1. Location and boundaries of the site
2. Proposed land and building uses
3. Lot lines
4. Location of open space
5. Proposed grading
6. Location and width of streets and ways, parking, landscaping

7. Existing vegetation to be retained
8. Water supply or approximate location of wells

9. Drainage
10. Proposed easements and methods of sewage disposal.

e. Existing Conditions Plan

An accompanying Existing Conditions Plan shall depict:

1. Existing topography
2. Wetlands, water bodies and the 100 year flood plain
3. All existing rights of way
4. All existing easements and structures
5. The location of significant features such as woodlands, tree lines, open fields or meadows and scenic views
6. Watershed divides and drainage ways
7. Fences and stone walls
8. Roads, driveways, and cart paths
9. Priority areas for open space preservation and conservation as described in Sections IV.K.5 and 6 below
10. Historic and archaeological resources
11. Boundaries of any National Register Historic District
12. The application shall also show locations of soil test pits and percolation tests, with supporting documentation on test results. Applicants shall also include a statement indicating the proposed use and ownership of the open space as permitted by this Bylaw, number and types of dwelling units, and lot plans, if any.

Applicants shall refer to the Subdivision Rules and Regulations for provisions regarding preparation and submittal of definitive subdivision plans.

f. Density/Number of Dwelling Units

1. The number of dwelling units permitted shall generally not exceed that which would be permitted under a conventional ("grid") subdivision that complies with the Town Zoning Bylaw and the Subdivision Rules and Regulations of the Planning Board and any other applicable laws and regulations of the Town or the state.
2. The Planning Board may require that a preliminary subdivision plan be submitted to assist in demonstrating the allowable number of units.

g. Review and Decision

Upon receipt of the application and the required plans, the Planning Board shall transmit one (1) copy each to the Board of Health and Conservation Commission. Within forty-five (45) days of their receipt of the application/plans, these agencies shall submit any recommendations to the Planning Board. The Planning Board

shall act on applications according to the procedure specified in M.G.L. Chapter 40A, §9. Notice shall be provided of hearings in accordance with Chapter 40A, §11 and Chapter 41, §81-T. Public hearings for the subdivision application and the special permit application shall be conducted concurrently.

h. Approval Criteria

1. Findings: The Planning Board may approve the development upon finding that it complies with the purposes and standards of the Open Space Residential Development bylaw and is superior in design to a conventional subdivision with regard to protection of natural features and scenic resources of the site. The Planning Board shall consider the following criteria in making its decision:
 - a. Upland open space as required by this Bylaw has been provided and generally conforms to the Design Requirements in Section IV.K.5 of this Bylaw.
 - b. Approximate building sites have been identified and are not located closer than one hundred (100) feet to wetlands and water bodies.
 - c. Proposed streets have been aligned to provide vehicular access to each house in a reasonable and economical manner. Lots and streets have been located to avoid or minimize adverse impacts on open space areas and to provide views of and access to the open space for the lots.
 - d. All lots and structures meet the applicable dimensional requirements of Section IV.K.4 of this Bylaw.
2. The Planning Board's findings, including the basis of such findings, shall be stated in the written decision of approval, conditional approval or denial of the application for special permit.

i. Conditions

The Planning Board shall impose conditions in its decision as necessary to ensure compliance with the purposes of this Bylaw. If individual or separate lots are proposed, approval of an Open Space Residential Development shall be conditioned upon Definitive Subdivision approval and shall be conditioned to provide that no further division of land which increases the number of lots or results in an alteration to the area to be set aside as open space may occur without a modification of the special permit. Any alteration of lot lines or layout of ways shall require approval of the Planning Board and shall be in compliance with the requirements of the Open Space Residential Development Bylaw and the Subdivision Rules and Regulations.

j. Time Limit

A special permit is granted for a period of two (2) years and shall lapse if substantial use or construction has not commenced by such date, except for good cause shown. The Planning Board is encouraged to grant extensions to allow construction of subdivisions within the grandfathering limits set forth in M.G.L. Chapter 40A, §6, except where such extension would derogate from the intent and purpose of this Bylaw.

k. Relationship to Subdivision Control Law

Nothing contained herein shall exempt a proposed subdivision from compliance with other applicable provisions of this Bylaw or the Subdivision Rules and Regulations of the Planning Board, nor shall it affect the right of the Board of Health and of the Planning Board to approve, condition or disapprove a subdivision plan in accordance with the provision of such Rules and Regulations and of the Subdivision Control Law. To the extent possible, the application for approval of an Open Space Residential Development and a definitive subdivision application shall be processed and administered contemporaneously.

4. Standards and Dimensional Requirements

Where the requirements of this section differ from or conflict with the requirements in the Table of Area Regulations and Table of Height and Bulk Regulations found elsewhere in this Bylaw, the requirements of this section shall prevail.

a. Dwelling Units per Structure

The Planning Board may permit structures to be constructed containing more than one (1) dwelling unit, but not more than four (4) dwelling units per structure. If multiple unit structures are to be constructed, the number of dwelling units per structure shall be varied within the Open Space Residential Subdivision, but structures containing four (4) dwelling units shall be limited to two (2) bedrooms per dwelling unit, and structures containing three (3) dwelling units shall be limited to three (3) bedrooms per dwelling unit.

b. For Structures on Individual Lots

1. Minimum Lot Size: The minimum lot size shall be not less than one-third (1/3) the square footage otherwise required by the Zoning District in which the subdivision is located or fifteen thousand (15,000) square feet, whichever is less.
2. Minimum Frontage: The minimum frontage may be reduced from the frontage otherwise required in the Zoning District, provided, however, that no lot shall have less than fifty (50) feet of frontage and provided further that such

frontage reduction shall apply only to lots fronting on proposed internal roadways. The sharing of driveways to reduce curb cuts is encouraged.

3. Lot Shape: All building lots must be able to contain a circle of a minimum diameter of fifty (50) feet from the front lot line to the rear building line.
4. Setbacks: The Planning Board may reduce by up to one-half the setbacks otherwise listed in Section III.B.3, the Table of Area Regulations, in this Bylaw, if the Board finds that such reduction will result in better design, improved protection of natural and scenic resources, and will otherwise comply with this Bylaw.

c. Minimum Spacing

If structures, regardless of the number of dwelling units contained therein, are not located on individual lots, the minimum spacing between structures shall be not less than twenty (20) feet, unless the Fire Chief specifically recommends a greater separation.

d. Road and Perimeter Setbacks

Every dwelling fronting on the proposed roadways shall be set back a minimum of twenty-five (25) feet from the roadway right-of-way, and a minimum of fifty (50) feet from the outer perimeter of the land subject to the application. This fifty (50) foot setback shall be maintained in a naturally vegetated state to screen and buffer the development. The Planning Board may waive this requirement if it finds the proposed development abuts existing permanent open space.

e. Required Open Space

All land area not utilized for lots or building sites, roads, and drainage shall be set aside as open space. A minimum of forty percent (40%) of the area of the parcel shall be provided as open space. Roadway rights-of-way shall not count toward the area to be provided as open space.

5. Open Space Design Requirements

The location of open space provided through this bylaw shall be consistent with the policies contained in the Master Plan and the Open Space and Recreation Plan of the Town. The following design requirements shall apply to open space and lots provided through this bylaw:

- a. Open space shall be planned as large, contiguous areas whenever possible. Long thin strips or narrow areas of open space (less than one hundred (100) feet wide) shall occur only when necessary for access, as vegetated buffers along wetlands or the perimeter of the site, or as connections between open space areas.

- b. Open space shall be arranged to protect valuable natural and cultural environments such as stream valleys, wetland buffers, unfragmented forestland and significant trees, wildlife habitat, open fields, scenic views, trails, and archeological sites, and to avoid development in hazardous areas such as flood plains and steep slopes. The development plan shall take advantage of the natural topography of the parcel, and cuts and fills shall be minimized.
- c. Open space may be in more than one parcel provided that the size, shape and location of such parcels are suitable for the designated uses. Where feasible, these parcels shall be linked by trails.
- d. Where the proposed development abuts or includes a body of water or a wetland, these areas and the one hundred (100) foot buffer to such areas shall be incorporated into the open space. Where appropriate, reasonable access shall be provided to shorelines.
- e. The maximum number of dwelling units compatible with good design shall abut the open space and all homeowners within the Open Space Residential Subdivision shall have reasonable physical and visual access to the open space through internal roads, sidewalks or paths. Such access may be limited where the Planning Board finds that resource areas are vulnerable to trampling or other disturbance.
- f. Open space shall be provided with adequate access, by a strip of land at least twenty (20) feet wide, suitable for a footpath, from one or more streets in the development.
- g. The visual impact of new development shall be minimized from scenic and historic roads by open space parcels or buffers separating the Open Space Residential Development from the road. Creation of new driveway openings on existing arterial roadways and existing scenic roads shall be minimized.
- h. Where a proposed development abuts land held for conservation purposes, the development shall be configured to minimize adverse impacts to abutting conservation land. Trail connections shall be provided where appropriate.

6. Allowable Uses of Open Space:

a. Purposes

Open space shall be used solely for recreation, conservation, agriculture or forestry purposes by residents and/or the public. Where appropriate, multiple use of open space is encouraged. At least one-half (1/2) of the required open space may be required by the Planning Board to be left in a natural state. The proposed use of the open space shall be specified in the application. If several uses are

proposed, the plans shall specify what uses will occur in what areas. The Planning Board shall have the authority to approve or disapprove particular uses proposed for the open space.

b. Recreation Lands

Where appropriate to the topography and natural features of the site, the Planning Board may require that at least ten percent (10%) of the open space or two (2) acres (whichever is less) shall be of a shape, slope, location and condition to provide an informal field for group recreation or community gardens for the residents of the subdivision.

c. Leaching Facilities

If not connected to public sewerage, and subject to the approval of the Board of Health, or as otherwise required by law, the Planning Board may permit a portion of the open space to be used for components of sewage disposal systems serving the subdivision, where the Planning Board finds that such use will not be detrimental to the character, quality, or use of the open space, wetlands or water bodies, and enhances the site plan. The Planning Board shall require adequate legal safeguards and covenants, to be included in the deeds to the lots in the Open Space Residential Development, that such facilities shall be adequately maintained by the lot owners within the development.

d. Accessory Structures

Up to five percent (5%) of the open space may be set aside and designated to allow for the construction of structures and facilities accessory to the proposed use of the open space including parking.

e. Agriculture and Forestry

Agriculture, horticulture, floriculture, viticulture, or forestry provided, if the land is not conveyed to the Town, the owner shall submit a long-term management plan for the use of the land, including, as appropriate, sustainable forestry or agricultural processes, pesticide, insecticide, fertilizer, and animal waste management plans, and other issues pertaining to the stewardship of the land. The Planning Board shall review and approve the plan in making its decision.

7. Ownership of Open Space

a. Ownership Options

At the developer's option and subject to approval by the Planning Board, all areas to be protected as open space shall be either:

1. Conveyed to the Town to be placed under the care, custody and control of the Conservation Commission, and be accepted by it for open space use. Land conveyed to the Town shall be open for public use;
2. Conveyed to a non-profit organization, the principal purpose of which is the conservation or preservation of open space, with a conservation restriction as specified in Section IV.K.7.b below. Such organization shall be approved by the Planning Board as a non-profit conservation organization.
3. Conveyed to a corporation or trust owned or to be owned by the owners of lots or residential units within the development (i.e. "homeowners association") and placed under a conservation restriction. If such a corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots or residential units. The developer is responsible for the maintenance of the open space and other facilities to be held in common until such time as the homeowners association is capable of assuming such responsibility. Thereafter, the members of the association shall share the cost of maintaining the open space. The Planning Board shall require the applicant to provide documentation that the homeowners association is an automatic (mandatory) association that has been established prior to the conveyance of any lots within the subdivision.

b. Permanent Restriction

In any case where open space is not conveyed to the Town, a permanent conservation or agricultural preservation restriction in accordance with M.G.L. Chapter 184, §31, approved by the Planning Board and Board of Selectmen and enforceable by the Town, conforming to the standards of the Massachusetts Executive Office of Environmental Affairs, Division of Conservation Services, shall be recorded to ensure that such land shall be kept in an open or natural state and not be built for residential use or developed for accessory uses such as parking or roadways except as permitted by this bylaw and approved by the Planning Board. Restrictions shall provide for periodic inspection of the open space by the Town. Such restriction shall be submitted to the Planning Board prior to approval of the project and recorded at the Registry of Deeds/Land Court simultaneously with recording of the definitive subdivision plan. A management plan may be required by the Planning Board which describes how existing woods, fields, meadows or other natural areas shall be maintained in accordance with good conservation practices.

c. Encumbrances

All areas to be set aside as open space shall be conveyed free of any mortgage interest, security interest, liens or other encumbrances.

d. Maintenance of Open Space

In any case where open space is not conveyed to the Town, the Town shall be granted an easement over such land sufficient to ensure its perpetual maintenance as conservation or recreation land and to allow the Town to enter the property for the purposes of inspecting the maintenance of the property. Such easement shall provide that in the event the trust or other owner fails to maintain the open space in reasonable condition, the Town may, after notice to the lot owners and public hearing, enter upon such land to maintain it in order to prevent or abate a nuisance. The cost of such maintenance by the Town shall be assessed against the properties within the development and/or to the owner of the open space. The Town may file a lien against the lot or lots to ensure payment of such maintenance expenses.

e. Monumentation

Where the boundaries of the open space are not readily observable in the field, the Planning Board may require placement of surveyed bounds sufficient to identify the location of the open space.

8. Density Bonuses

The Planning Board may approve density bonuses pursuant to one or both of the following provisions, provided, however, that in no case shall the density bonus permit greater than a fifteen percent (15%) increase in the number of lots permitted in the subdivision.

- a. A density bonus may be permitted when the proposed subdivision provides permanently affordable housing opportunities, whether within the Open Space Residential Subdivision or elsewhere in Sutton. When located within the Open Space Residential Subdivision, affordable units shall be developed concurrently with the market rate units.
 1. For each affordable dwelling unit provided under this section, one additional dwelling unit may be permitted, up to a maximum fifteen percent (15%) increase in number of dwelling units. For Open Space Residential Subdivisions with individual lots for each dwelling unit or structure, the increase in dwelling units shall correspond with an increase in the number of lots otherwise allowed to be created in the subdivision.
- b. A density bonus may be permitted when the proposed subdivision provides for public access to open space areas within the subdivision. For every five (5) acres of land that is donated to the municipality and open to public use, one additional building lot may be permitted, up to a maximum fifteen percent (15%) increase in the number of building lots. Open space that is open to public use shall be accessible from a public way and adequate parking shall be provided to meet anticipated demand for the use.

9. Severability

If any provision of this Bylaw is held invalid by a court of competent jurisdiction, the remainder of the Bylaw shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this Bylaw shall not affect the validity of the remainder of the Sutton Zoning Bylaw.